

**FOX ROTHSCHILD LLP**

Michael A. Sweet (Bar No. 184345)

Dale L. Bratton (Bar No. 124328)

Avi E. Muhtar (Bar No. 260728)

235 Pine Street, Suite 1500

San Francisco, CA 94104-2734

Telephone: (415) 364-5540

Facsimile: (415) 391-4436

msweet@foxrothschild.com; dbratton@foxrothschild.com; amuhtar@foxrothschild.com

**LOWENSTEIN SANDLER PC**Jeffrey D. Prol, Esq. (*pro hac* pending)Wojciech F. Jung, Esq. (*pro hac* pending)

65 Livingston Avenue

Roseland, NJ 07068

Telephone: (973) 597-2500

Facsimile: (973) 597-2400

jprol@lowenstein.com; wjung@lowenstein.com

Bruce S. Nathan, Esq. (*pro hac* pending)

1251 Avenue of the Americas

New York, NY 10020

Telephone: (212) 262-6700

Facsimile: (973) 422-6851

bnathan@lowenstein.com

*Proposed Co-Counsel to the Official Committee of Unsecured Creditors***UNITED STATES BANKRUPTCY COURT****EASTERN DISTRICT OF CALIFORNIA****SACRAMENTO DIVISION**

In re:

ZACKY FARMS, LLC, a California  
limited liability company,

Debtor.

Case No. 12-37961 (TCH)

DCN: FWP-1

Chapter 11

**APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF  
ZACKY FARMS, LLC FOR ORDER AUTHORIZING RETENTION AND EMPLOYMENT  
OF LOWENSTEIN SANDLER PC AS COUNSEL *NUNC PRO TUNC* TO OCTOBER 18, 2012**

The Official Committee of Unsecured Creditors of Zacky Farms, LLC (the “**Committee**”) appointed in the above-captioned case, hereby files this application (the “**Application**”) seeking entry of an order authorizing the Committee to retain and employ the law firm of Lowenstein Sandler PC (“**Lowenstein**” or the “**Firm**”), *nunc pro tunc* to October 18, 2012, as counsel to the Committee in the above-captioned case, pursuant to §§ 105, 328(a) and 1103(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), and Rules 2014 and 5002 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). In support of this Application, the Committee respectfully represents as follows:

**BACKGROUND**

1. On October 8, 2012 (the “**Petition Date**”), Zacky Farms, LLC (the “**Debtor**”) filed a

1 voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States  
2 Bankruptcy Court for the Eastern District of California, Sacramento Division (the "**Court**").

3 2. The Debtor continues to operate its businesses and manage its properties as debtor-in-  
4 possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

5 3. Information about the Debtor's businesses and the events leading up to the Petition Date  
6 can be found in the *Declaration Keith F. Cooper in Support of Application for an Order Shortening*  
7 *Time and in Support of First Day Motions* (the "**Cooper Declaration**") [Doc. No. 5], which is  
8 incorporated herein by reference.

9 4. On October 16, 2012, the United States Trustee filed the *United States Trustee's*  
10 *Appointment of the Unsecured Creditors Committee* [Docket. No. 65] and thereby appointed the  
11 Committee consisting of: (i) Western Milling, LLC; (ii) Foster Farms, LLC & Foster Poultry Farms;  
12 (iii) Associated Feed & Supply; (iv) Sealed Air Corporation; (v) Axis Media Management, Inc.; (vi)  
13 Gahvejian Enterprises, Inc.; and (vii) International Paper Company.

14 5. On October 18, 2012, at a meeting in which a quorum of the members of the Committee,  
15 or their duly designated alternates, were present, the Committee voted to retain Lowenstein as its  
16 lead counsel in this case. On October 19, 2012, Committee voted to retain Fox Rothschild LLP as  
17 its California counsel. And, on October 22, 2012, the Committee voted to retain CohnReznick LLP  
18 as its financial advisor.

19 6. No other official committees have been appointed or designated in this Chapter 11 case.

#### 20 **JURISDICTION**

21 7. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and  
22 1334. The statutory predicates for relief sought herein are §§ 105, 328(a), and 1103(a) of the  
23 Bankruptcy Code and Bankruptcy Rules 2014 and 5002. This matter is a core proceeding pursuant  
24 to 28 U.S.C. § 157(b).

25 8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### 26 **RELIEF REQUESTED**

27 9. Pursuant to §§ 105, 328(a) and 1103(a) of the Bankruptcy Code, the Committee seeks to  
28 employ and retain Lowenstein as its counsel in connection with this Chapter 11 case, effective as of

1 October 18, 2012, which is the date the Committee retained Lowenstein and that Lowenstein  
2 commenced providing services on behalf of the Committee.

3 10. By this Application, the Committee respectfully requests that the Court enter an order  
4 authorizing the Committee to retain and employ Lowenstein as its counsel, *nunc pro tunc* to October  
5 18, 2012, to represent the Committee in all phases of this Chapter 11 case.

6 **BASIS FOR RELIEF**

7 11. Pursuant to §§ 328(a) and 1103 of the Bankruptcy Code, a committee appointed under  
8 § 1102 may employ one or more attorneys to represent it in carrying out its duties under the  
9 Bankruptcy Code, provided that such attorneys are disinterested persons and do not hold or represent  
10 an interest adverse to the estates. 11 U.S.C. §§ 328, 1103. The Committee requests that the Court  
11 approve its retention of Lowenstein as its attorneys to perform certain legal services that will be  
12 necessary during this Chapter 11 case in accordance with Lowenstein's standard hourly rates and  
13 disbursement policies.

14 12. The Committee selected Lowenstein because Lowenstein has considerable experience in  
15 matters of this nature and knowledge in the fields of, *inter alia*, debtors' and creditors' rights,  
16 businesses reorganizations under Chapter 11 of the Bankruptcy Code, and general corporate law, and  
17 because of its expertise, experience and knowledge in advising and representing official committees  
18 of unsecured creditors. In the past 3 years, Lowenstein acted as lead counsel to the Official  
19 Committee of Unsecured Creditors in chapter 11 bankruptcy cases of the following integrated  
20 poultry producers: *Townsend's, Inc.*, *Allen Family Foods*, and *Cagle's, Inc.* Lowenstein was also  
21 involved in the chapter 11 case of integrated poultry producer *Pilgrim's Pride*. The attorneys at  
22 Lowenstein who will be employed in this Chapter 11 case are members in good standing in the  
23 courts in which they are admitted to practice. Accordingly, the Committee seeks to retain  
24 Lowenstein because the Firm is well qualified to represent and assist the Committee in performing  
25 its duties in this Chapter 11 case.

26 **SERVICES TO BE PROVIDED BY LOWENSTEIN**

27 13. The Committee respectfully submits that it is necessary and appropriate to employ and  
28 retain Lowenstein as counsel to represent the Committee in this Chapter 11 case and render various

1 professional services to enable the Committee to execute faithfully its duties, including, but not  
2 limited to:

- 3 a. serving as lead bankruptcy counsel to the Committee;
- 4 b. providing the Committee with legal advice with respect to its powers, rights, duties, and  
5 obligations in this Chapter 11 case;
- 6 c. assisting and advising the Committee in its consultations with the Debtor regarding the  
7 administration of this Chapter 11 case;
- 8 d. taking all necessary actions to protect and preserve the estates of the Debtor for the  
9 benefit of creditors, including involvement in the Committee's investigation of the acts,  
10 conduct, assets, liabilities, and financial condition of the Debtor, the prior operation of  
11 the Debtor's businesses, investigation and prosecution of estate claims and causes of  
12 action and any other matters relevant to this Chapter 11 case;
- 13 e. assisting in preparing on behalf of the Committee all necessary motions, applications,  
14 answers, orders, reports, papers and other pleadings and filings in connection with the  
15 Committee's duties in this Chapter 11 case;
- 16 f. advising the Committee on the corporate aspects of the Debtor's reorganization or  
17 liquidation and the plan(s) or other means to effect reorganization or liquidation as may  
18 be proposed in connection therewith, and participation in the formulation of any such  
19 plan(s) or means of implementing reorganization or liquidation, as necessary;
- 20 g. advising and representing the Committee in hearings and other judicial proceedings in  
21 connection with all applications, motions, or complaints and other similar matters; and
- 22 h. performing all other necessary legal services in connection with the post-petition  
23 representation of the Committee.

24 14. The Committee respectfully represents that it is necessary for the Committee to retain  
25 counsel to perform the above-referenced services and to otherwise assist the Committee in fulfilling  
26 its statutory duties under the Bankruptcy Code. Lowenstein began its representation of the  
27 Committee following the date of Lowenstein's election as Committee counsel, subject to the Court's  
28 approval of its retention.

**DISINTERESTEDNESS OF LOWENSTEIN**

15. To the best of the Committee's knowledge, information and belief, and as evidenced by the declaration of Wojciech F. Jung, in support of the application to employ Lowenstein as counsel to the Committee (the "**Jung Declaration**"), filed concurrently herewith. Lowenstein does not currently hold or represent an interest adverse to the interest of the estate with respect to the matters on which Lowenstein is to be employed, except as set forth therein, and Lowenstein is a "disinterested person" as defined in § 101(14) of the Bankruptcy Code.

16. Lowenstein does not, and has not, represented any entities, other than the Committee, in matters related to this Chapter 11 case. Lowenstein may represent or may have represented certain parties with interests in the Chapter 11 case on matters unrelated to the Chapter 11 case. As set forth in the Jung Declaration, Lowenstein has conducted, and continues to conduct, research into its relations with the Debtor, the Debtor's substantial creditors and other parties interested in this Chapter 11 case.

17. The Debtor has many creditors and/or investors. A firm the size of Lowenstein, which employs approximately 270 attorneys and has a large and diversified legal practice, necessarily may have contacts and relationships with such parties and entities and/or professionals retained by them that may include present representations of or against certain creditors of the Debtor in matters unrelated to the Debtor and its bankruptcy case, as well as minor equity holdings in such parties and entities by partners in the Firm. The Firm may supplement the Jung Declaration from time to time to disclose any such additional material contacts or relationships with significant parties as and if they become known.

**COMPENSATION OF LOWENSTEIN**

18. The terms of the employment of Lowenstein provide generally that certain attorneys and other personnel within the firm will undertake this representation at their standard hourly rates, and that Lowenstein will be reimbursed for reasonable and necessary expenses, subject to the approval of the Court in accordance with § 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules and the orders of this Court.

BY: [Signature]  
Associated Feed & Supply, as Chairperson of  
the Official Committee of Unsecured  
Creditors of Zacky Farms, LLC.